

APPENDIX

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

October Term, 1979
No. 78-1548

CALIFORNIA BREWERS ASSOCIATION, et al.,

Petitioners,

vs.

ABRAM BRYANT,

Respondent.

**On Writ of Certiorari to the United States Court of Appeals
for the Ninth Circuit.**

PETITION FOR CERTIORARI FILED APRIL 11, 1979
CERTIORARI GRANTED JUNE 4, 1979.

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APPENDIX

Opinions Below.

The opinion of the Court of Appeals for the Ninth Circuit is officially reported at 585 F.2d 421, unofficially reported at 18 F.E.P. Cas. 826 and is set forth in Appendix A of the Petition for Writ of Certiorari, filed April 11, 1979. No opinion was rendered by the District Court for the Northern District of California.

**Docket Entries From Record on Appeal From Northern
District of California to Ninth Circuit (R. 533-535).**

(Case Title Omitted in Printing)

1973

Oct 19 1. Filed Complaint . . . iss summons.

Oct 31 2. Filed Order for Service other than by USM.

Nov 20 3. Filed Stip Ext'g time to 12/20/73 for Deft Miller to respond.

Nov 21 4. Filed Stip Ext'g time to 12/19/73 for Deft FALSTAFF to respond to complt.

Nov 26 5. Filed Stip re 30 day ext to time to respond to complaint.

Nov 26 6. Filed Stip that Deft TEAMSTER's Local 856 may have to 12/20/73 to respond to complt.

Dec 11 7. Filed summons on ret, exec as to PAHLOW, BURTON, ANHEUSER, & PABST & unexec as to GORDON BOURNE.

Dec 17 8. Filed US Marshal's instructions service record on ret, exec.

Dec 20 9. Filed Deft FALSTAFF's Ans to Complaint.

10. Filed Deft's not of Mo to Dism for lack of Jurisdiction & Mo.; set 1/11/74 @ 11am.

Dec 20 11. Filed Joinder of MILLER BREWING in Mo to Dism for lack of Juris.

Dec 26 12. Filed Defts not of mo & mo to Dism; set for 1/11/74 @ 11am.

Dec 27 13. Filed Substn of attys for cert Defts.

1974

Jan 2 14. Filed Deft GENERAL BREWING, etc Mo to Dism; set for 2/1/74 @ 11am.

Jan 8 15. Filed Stip for ext of time to resp as to TEAMSTERS LOCAL 856. time extd to 1/21/74.

Jan 11 Iss alias summons.

16. Filed Stip & ord contg hrg on mo to Dism to 2/1/74 @ 11am. LHB

Jan 15 17. Filed Stip extg time to 1-15-74 for Deft Local 888 to resp. LHB

Jan 15 18. Filed Deft Local 888's not of mo & Mo to dism; set for 2-8-74 @ 11.

Feb 1 19. Filed Ord contg hrg on mo to Dism. LHB (Hrg contd to 2/22/74 @ 11am. LHB)

20. Filed Stip & Ord ocntg hrg on Defts' mo to Dism to 2/22/74 @ 11am.

1974

Feb 4 21. Filed Summons on ret, exec.

Feb 8 22. Filed Stip extg time to 3/11/74 for Defts SALES DRIVERS, DAIRY EMPL & BEER DRIVERS UNION. LHB

Feb 12 23. Filed Pltff's Memo of Pts & Auths in .Esponse to Deft's mos to Dism.

Feb 15 24. Filed Amended Complaint . . . no process.

Feb 25 25. Filed Deft FALSTAFF's 1st interrogs & 1st req for prod of docs.

Mar 4 26. Filed Deft's Suppl Pts & Auths.

Mar 4 27. Filed Deft MILLER's Suppl Pts & Auths in supp of Mo to Dism.

Mar 5 28. Filed Stip to Amend Complt.

29. Filed Fur Memo of Pts & Auths in supp of Mo to dism of Defts GENERAL.

Mar 11 30. Filed Stip & Ord contg hrg to 4/5/74 @ 11am for mo to Dism.

Mar 11 31. Filed Stip & Ord contg time to resp to 30 days from decision on mo to Dism. LHB.

Mar 18 32. Filed Pltff's fur memo of Pts & Auths in response to Defts' mos to

Mar 18 33. Filed Stip extg time to 4/15/74 for Defts to respond. & Ord. LHB

Mar 20 34. Filed Stip for ext of time to 4/25/74 for Pltf to resp to Defts i

Apr 1 35. Filed Deft MILLER's final response in supp of Mo to Dism.

Apr 1 36. Filed Final Memo of Pts & Auths in supp of Mo to Dism.

Apr 5 37. Filed Pltff's Ans to Deft FALSTAFF's Interrogs 35-38.

Apr 5 ORD: Deft's mo to Dism cont'd to 5/10/74 @ 2pm. LHB

Apr 5 38. Filed Affdvt of James Wolpman.

Apr 12 39. Filed Pltff's mo for leave to file suppl Pleading.

Apr 11 40. Filed Reporter's Transcript of Apr 5, 1974.

Apr 19 41. Filed Stip & Ord extg time to ans until 10 days after hrg on pending mos to Dism. LHB (as to TEAMSTERS LOCAL 856)

42. Filed Stip & Ord cont'g time of Deft LOCAL 856 to ans to 5/10/74.

Apr 29 43. Filed Pltff's response to Deft FALSTAFF'S 1st interrogs.

Apr 30 44. Filed Deft MILLER BREWING's oppos to Pltff's mo for leave to file pleading.

- 1974
- Apr 30 45. Filed Oppos to Pltff's Mo to supplement Complaint.
- May 2 46. Filed Mo of EEOC to participate as Amicus Curiae.
- May 7 47. Filed Pltff's Memo in supp of mo to supplement complaint.
- May 8 48. Filed Pltf's response to Deft Falstaff's first request for production of documents.
- May 9 49. Filed Defts' Oppos to Participation of EEOC as Amicus Curiae & Proposed Ord.
- May 10 50. Filed Affdvt in supp of iss of Right to sue notice prior to 180 day.
ORD: Hrg cont'd to 5/13/74 @ 1:30, Mo for Amicus Curiae by EEOC, denied Mo to file 2nd amended complaint . . . granted.
- May 22 51. Filed 2nd Amended Complaint.
- June 7 52. Filed Brief for the EEOC in supp of Pltff's Mo for leave to Suppl complaint & in oppos to Deft's Mo to Dism. (amicus curiae).
- June 7 53. Filed Defts General Brewing, etc., mo to Dism 2nd amended complt.
- Jul 2 54. Filed Stip. & Order that all proceedings in the above matter will be stayed to Sept. 11-74 (LHB)
- Aug 16 55. Filed Substn of counsel for SCHLITZ.
- Aug 26 56. Filed Substn of attys for Deft Pabst.
- Aug 29 57. Filed Deft Schlitz's not of substn of counsel.
- Sep 9 58. Filed deft's add'l pts and author. in supp. of mo to dismiss pltf's sec amended complt.
- Sep 10 59. Filed Joinder of deft Miller Brewing Co. in mo to dismiss. pltf's sec. amended complt.
- Sep 11 60. Filed Affidavits of Attorneys James H. Wolpman & Edward N. Simon in showing efforts of Parties to conciliate.
- Sep 11 Civil Minute Order Motions to dismiss, Complaint is dismissed as to all Deft's Mr. Carr to prepare Order (LHB)
- Oct 17 61. Filed ORD. defts' mo to dis—GRANTED. LHB
- Oct 18 62. Entered JUDGT: pltf to take nothing by his amend. & suppl complt and that action be dismissed w/prejudice LHB
Mailed not of entry of judgt
- Nov 14 63. Filed pltf's Not of appeal of Judgt filed 10-18-74 not of appeal mailed to counsel & 9th CCA.
64. Filed pltf's \$250 Bond for costs on appeal.

- 1974
- Nov 18 65. Filed orig of Reporter's Transcript of 9-11-74.
- Nov 21 66. Filed Designation of Record on Appeal by appellant & appellee.
67. Filed Ord for Prepar of Reporter's transcripts.
- Dec 2 68. Filed Ord for Prepar of Reporter's Transcripts by appellees Calif. B ass., General Brewing Co., Theodore Hamm Col & Anheuser-Busch Inc.
- Dec 23 Rec'd Reporter's Transcript from Ct. Reporter (proceeds of 4-5-74) with proceeds of 9-11-74 added) orig & 1 copy.
- Dec 26 MADE, MAILED, RECORD ON APPEAL TO 9TH CCA.

Docket Entries From Ninth Circuit.
(Case Title Omitted in Printing)

- 1975
- Jan 30 FILED ORIG & 3 MOTION OF APPELLEE PABST BREWING COMPANY TO DISMISS APPEAL UNDER RULE 12-C FRAP (To McAvoy) (12C)
- Jan 30 DOCKETED CAUSE & ENTD APPEARANCES OF COUNSEL.
CAUSE DOCKETED UNDER RULE 12(c) F.R.A.P. APPELLANT CANNOT RESPOND UNLESS DOCKET FEE IS PAID OR LEAVE TO APPEAL IN FORMA PAUPERIS IS GRANTED.
- Feb 3 DOCKET FEE PAID. gb Clerk's Fee (Appellant) \$50.
- Feb 5 Filed aples' (ANHEUSER-BUSCH, INC., et al.) motion to dismiss appeal. To: McAvoy gb
- Feb 6 Filed aplt's motion to docket appeal out of time and for nunc pro tunc order therefore, and response to motion to dismiss appeal to (McAvoy). jr 2/6/75
- Feb 12 Filed joinder of aple (Miller Brewing Co) motion of certain aples to dismiss appeal to McAvoy. jr 2/6/75
- Feb 12 Filed, as of 2/11/75, aple's (Jos. Schlitz Brewing Co) motion to dismiss appeal to (McAvoy). jr 2/7/75
- Feb 18 Filed aplts response to certain further motions to dismiss appeal to (McAvoy). jr 2/15/75
- Feb 20 Filed order (W & S) the aples motion to dismiss the appeal is denied jr

1975
Feb 27 REC'D ON 12-30-74, LATE CERT. TRANSC
RECORD ON APPEAL IN FOUR VOLUMES:
VOLS. I-III, PLEADINGS, ORIG. ONLY; VOL
IV REPORTER'S TRANSCRIPT, ORIG. & ONE
COPY. ONE ENVELOPE OF EXHIBITS FILED
IN LPS. ***** —acb—
Mar 3 Filed aplt's. motion for leave to file late record.
To: "C" ec
Mar 6 Filed order (K) granting aplt leave to file late
record. jr
Mar 6 Record Filed. —acb—
Appellant's brief due to be filed on April 21, 1975
pursuant to Order of this Court filed March 6,
1975. —acb—
Mar 11 FILED TWO ADDITIONAL COPIES OF THE
RECORD, VOLS. I, II & III, PLEADINGS.
—acb— Clerk's fee (Appellant) \$15.
Apr 21 Filed 25 Aplt's Briefs. 4-21-75 ec
May 19 Received letter of Appellee's dated May 15, 1975
advising The office of Brundage, Beeson, Reich,
Pappy & Hackler is counsel for appellees Bottlers
Union Local 896 and Drivers Union Local 203. By
this letter they join in the briefs to filed by the
other appellees. sj
May 21 Filed aple's (Teamsters Local 856) motion for ext
of time to file briefs; to "C" ec
May 23 Filed appellees' motion for enlargement of time
within which to file brief; affidavit of Michael Ryan
in support thereof. To "C"
May 28 Filed orig & 5 Appellee's motion for ext of time
to file (Beer drivers brief (to Chambers) 5-23-75
sj
May 29 Filed order (C) granting aple's (Gen. Brewing Co,
et al.) ext for filing brief to July 28, 1975. —ec—
May 29 Filed order (C) granting aple (Teamsters Union
Local 856) ext for filing brief. Brief due 21 days
from date (May 28) —ec—
Jun 10 Filed appellee's motion (Teamsters Union Local
856) for ext of time for filing brief. To "C"
—ec—
Jun 13 Filed as of June 9, 1975 order (C) Brief of Ap-
pellee due 21 days from May 28, 1975. BRIEF
DUE June 25, 1975) sj
Jun 13 Filed order (C) extding time to July 28th in which
to file brief of appellee Teamsters Union Local
856. rh

1975
Jul 28 Filed 25 Aplee's Briefs (Cal. Brewers Assoc., et
al.) 7/25/75 —dmf—
Jul 28 Filed 25 Aplee's Briefs (Teamsters Union Local
856 and 893) 7/28/75 —dmf—
Jul 29 Filed 25 Separate Aplee's Briefs (Pabst Brewing
Co., Miller Brewing Co., and Jos. Schlitz Brewing
Co.) 7/28/75 —dmf—
Jul 30 Filed Pltf-aplt's Motion for Enlargement of Time
Within Which to File Reply Brief. (to "C")
—acb—
Aug 1 Filed order (C) granting aplt ext for filing reply
brief to Sept. 10/75. ec
Sept 2 Filed stipulations for enlargement of time within
which to file aplt's reply brief. To "C" ec
Sept 8 Filed order (C) granting Aplt an ext of time to file
his reply brief to and including September 10,
1975. —dmf—
Sept 10 Filed 25 Aplt's Reply Briefs (9/10/75) —dmf—
Nov 5 Filed appellant's motion for leave to file appendix.
to "C" w/copy of appendix. ec
Nov 5, Rec'd 10 Appendixes to aplt's brief. (11/4/75)
—dmf—
Nov 10 Filed order (C) granting aplt leave to file an ap-
pendix to his brief. ec
Nov 10 Filed 10 Appendixes to Aplt's Brief (11/4/75)
—dmf—
1977
May 4 Rec'd from aple's letter dtd. May 3, 1977, re add'l
citations. CALENDARED (panel) ec
May 5 Rec'd from aplt letter dtd. May 4, 1977, re add'l
citations with copies of the Report of the Civil
Rights Commission. May 12, 1977 sf panel ec
May 12 ARGUED & SUBMITTED TO: HUFSTEDLER,
TRASK, CJJ & HARRY PREGERSON, DJ. gb
Jun 8 Filed aple's supplemental authorities and motion for
leave to file supp. brief. (panel) ec
Jun 9 Filed aple's amended certificate of service to motion
for leave to file supp. brief. ec
Jun 9 Rec'd from aple (Miller Brewing Co.) letter dtd.
Jun 7, 1977, re US Supreme Ct. decision in Int'l
Bro. of Teamsters v. U.S. (panel) ec
Jun 15 Rec'd from aplt letter dtd. Jun 14, 1977, re aple's
letter of Jun 7, 1977. (panel) ec
Jun 15 Filed Aplt's response to motion of certain aple's for
leave to filed supplemental brief. (panel) mc

1977
 Jun 27 Filed order (H & T, CJJ & PREGERSON, DJ) Aples' motion for leave to file a supplemental brief is granted. Said supplemental brief shall be filed no later than 10 days after the filing of this order. —fn—
 Jul 5 Filed 4 Aples' Supplemental Briefs (California Brewers Assoc., et al.) 6/30/77 —dmf— (panel)
 Jul 7 Filed aplt's motion for leave to file supplemental memorandum of points & authorities. (panel) ec
 Jul 7 Rec'd aplt's supplemental memorandum of points & autho. (panel) ec
 May 17 Filed as of 5/15/78, Aple substitution of attorneys. 5/12 —vt—
 1978
 Nov 13 As of Nov. 3, ORDERED OPINION (PREGERSON) TRASK DISSENTING; FILED & JUDG TO BE FILED & ENTD.
 Nov 13 As of Nov. 3, Filed opinion—Reversed and remanded for further proceedings consistent with the views herein expressed.
 Nov 13 As of Nov. 3, Filed & Entd Judgment. —fn—
 Nov 28 Filed as of 11/17/78, Certain Aples' Motion for Extension Within Which to File Petition for Rehearing/Rehearing En Banc. (to panel) nw
 Dec 1 Filed, as of Nov. 16, Apl't's cost bill. —db—
 Dec 6 Filed, as of of Nov. 14, order (H) IT IS HEREBY ORDERED that the dfds-aples California Brewers Association; Theo. Hamm Co.; Anheuser-Busch, Inc.; General Brewing Corp; Falstaff Brewing Corp.; Miller Brewing Co.; Joseph Schlitz Brewing Co.; and Pabst Brewing Co. may have up to and including Dec. 4, 1978 within which to file a petition for rehearing and/or a petition for rehearing en banc. —fn—
 Dec 7 Filed Order as of 12/4, (in LA) (Hufstedler) extending time for filing aples' Petition for Rehearing & suggestion for rehearing en banc to Dec 14, 1978. ec
 Dec 7 Filed as of 12/4, orig & 24 Aples' Petition for Rehearing and Suggestion for Hearing en banc. 12/1 active judges, panel ec
 Dec 11 Filed, as of Dec. 5, order (H) Aples' motion for an ext of time within which to file a petition for rehearing and a suggestion for rehearing en banc is granted to and including Dec. 14, 1978. —fn—

1979
 Jan 17 Filed, as of Jan. 11, order (H & T, CJJ & PREGERSON, DJ) The petition for rehearing is denied and the suggestion for a hearing en banc is rejected. —fn—
 Jan 1979 MANDATE ISSUED
 Feb 2 Returned to D.C. Vols 1-2, Pleadings, Originals, Vol 2, R.T's, 1 copy, plus 1 ENVELOPE OF EXHIBITS mm
 Apr 16 Received SC notice of filing petition for certiorari on 4/11/79, assigned SC#78-1548. pn
 Jun 11 Filed certified copy of SC order of 6/4/79, granting certiorari. pn (copies to panel)

**Second Amended Complaint
 (Employment Discrimination and
 Unfair Representation)**

In the United States District Court, Northern District
 of California.

Abram Bryant, individually and on behalf of all others similarly situated, Plaintiff, vs. California Brewers Association; Miller Brewing Company; Joseph Schlitz Brewing Company; Anheuser-Busch, Incorporated; Pabst Brewing Company; Theodore Hamm Company; General Brewing Company; Falstaff Brewing Corporation; Teamster Brewery and Soft Drink Workers Joint Board of California of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Local Union 856 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America in itself and as successor to former Brewers Union Local 893 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Salesdrivers and Dairy Employees Union Local 166 in itself and as successor to former Brewers Union Local 893 of the International Brotherhood of Teamsters, Chauffeurs,

Warehousemen and Helpers of America; Bottlers Union Local 896 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Beer Drivers and Salesmen's Union Local 888 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Drivers Union Local 203 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Salesdrivers, Helpers, and Dairy Employees Union Local 683 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Defendants. Civil No. C-73-1866 LHB.

1. Plaintiff hereby amends his original complaint pursuant to Rule 15(a) of the Federal Rules of Civil Procedure. Paragraphs where additions occur are preceded by an asterisk (*).

2. Plaintiff, individually and on behalf of all other persons similarly situated, seeks redress for wrongfully being prevented from achieving the status of a permanent employee in the brewery industry.

JURISDICTION

*3. This action arises under the provisions of Title VI of the Acts of Congress known as the Civil Rights Act of 1964, 42 U.S.C. §§2000e et seq., and under the Civil Rights Act of 1866, 42 U.S.C. §1981. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. §2000e(5)(f) and 28 U.S.C. §1343(4) to redress deprivation of rights secured by 42 U.S.C. §§2000e et seq., providing for mandatory injunctive and other relief against discrimination in employment based on race, religion, sex or national origin, and by 42 U.S.C. §1981, providing for the equal rights of all persons in the United States. The unfair repre-

sentation action arises under 29 U.S.C. §§159(a) and 185(a).

*4. Jurisdiction is conferred on this Court by 28 U.S.C. §§1331, 1337, 1343(4), 2201, 2202, 29 U.S.C. §185(a), 42 U.S.C. §1988, and Rule 57 of the Federal Rules of Civil Procedure.

PLAINTIFF

5. Plaintiff Abram Bryant is a Black male citizen of the United States and a resident of the City of San Jose, County of Santa Clara, State of California. At all times relevant hereto, Plaintiff was employed as a temporary employee by Defendant Falstaff in San Jose, California, or in San Francisco, California, and was a member in good standing of Freight Checker Clerical Employees and Helpers Union Local 856 (hereafter Local 856) of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (formerly Brewers Union Local 893 (hereafter Local 893) of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.)

CLASS

*6. The named Plaintiff brings this action on his own behalf and pursuant to Rule 23(a), (b)(2) of the Federal Rules of Civil Procedure on behalf of all other persons similarly situated: The members of the class similarly situated are all Blacks who have or will seek referral or employment from defendant employers and unions or who have or will be employed at any of the breweries of defendant employers covered now or then by the collective bargaining agreement attached as Exhibit A to the original complaint, including all preceding and succeeding agreements there-

to. The requirements of Rule 23 are met in that: the class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representative party are typical of the claims of the class; the representative party will fairly and adequately protect the interests of the class; and the parties opposing the class have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

DEFENDANTS

*7. Defendant California Brewers Association (hereafter the Association) is a California corporation which represents a group of breweries doing business in the State of California in regards to labor-management relations and other matters. At all times relevant herein it was acting as the agent of and on behalf of Defendant Falstaff and the other defendant employers in negotiating and maintaining the illegal and discriminatory seniority agreements described herein. Defendant Miller Brewing Company, a Wisconsin corporation doing business in California, Defendant Joseph Schlitz Brewing Company, a Wisconsin corporation doing business in California, Anheuser-Busch, Incorporated, a Missouri corporation doing business in California, Pabst Brewing Company, a Delaware corporation doing business in California, Theodore Hamm Company, a Minnesota corporation doing business in California, General Brewing Company, a California corporation, and Falstaff Brewing Corporation (hereafter Falstaff), a Delaware corporation doing business in California are all members of the Association. Each

of the above named defendants is an employer within the meaning of 29 U.S.C. §152(2) and also within the meaning of 42 U.S.C. §§2000e-2(b) in that the company is engaged in an industry affecting commerce and employs at least twenty-five (25) persons.

8. Defendant Falstaff operated a plant where Plaintiff worked employing between 100 and 150 employees in the City of San Jose, County of Santa Clara, State of California, until the winter of 1972-73. That winter Falstaff transferred its workers to its plant in the City and County of San Francisco, State of California.

*9. Defendant Teamster Brewery and ~~Soft Drink~~ Workers Joint Board of California of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereafter Joint Board) is an unincorporated association and a labor organization within the meaning of 29 U.S.C. §152(5) and also within the meaning of 42 U.S.C. §§2000e-2(d) in that the Joint Board is engaged in an industry affecting commerce and exists, whole or in part, for the purpose of dealing with the employers concerning grievances, labor disputes, wages, rates of pay, hours, and other terms or conditions of employment of the various companies located in various cities throughout the state of California, including employees of Defendant Falstaff's facilities in and around the City and County of San Francisco and the City of San Jose, County of Santa Clara, and in the State of California. The Joint Board has at least twenty-five (25) members. At all times relevant herein it was acting as the agent of and on behalf of Defendant Local 856 and its predecessor Local 893 and the other defendant locals

herein in negotiating and maintaining the illegal and discriminatory seniority and referral provisions described herein.

10. Defendant Local 856 in itself and as successor to former Local 893 is an unincorporated association and a labor organization within the meaning of 29 U.S.C. §152(5) and also within the meaning of 42 U.S.C. §§2000e-2(d) in that Local 856 and former Local 893 (which recently merged with Local 856) are both unincorporated associations and labor organizations within the meaning of 29 U.S.C. 152(5) and also within the meaning of 42 U.S.C. §§2000e-2(d) in that both are or were engaged in an industry affecting commerce and exist, whole or in part, for the purpose of dealing with the employers concerning grievances, labor disputes, wages, rates of pay, hours and other terms or conditions of employment of the various companies located in various cities throughout the state of California, including employees of Defendant Falstaff's facilities in and around the City and County of San Francisco and the City of San Jose, County of Santa Clara, and in the State of California. Local 856 has at least twenty-five (25) members.

*11. Defendant Salesdrivers, Helpers, and Dairy Employees Union Local 166 (hereafter Local 166) of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is successor to former Local 893 in the southern counties of the state of California. When Local 893 was dissolved, the northern counties of the local were merged into Local 856 and the southern counties into Local 166. We therefore include Local 166 not as a new defendant but as successor to former Local 893. Defendants Local

893, Local 166, Bottlers Union Local 896 (hereafter Local 896) of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Beer Drivers and Salesmen's Union Local 888 (hereafter Local 888) of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Drivers Union Local 203 (hereafter Local 203) of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Salesdrivers, Helpers and Dairy Employees Union Local 683 (hereafter Local 683) of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America are all members of the Joint Board (Local 893 was formerly a member before the merger with Local 856 and Local 166) and are all unincorporated associations and labor organizations individually within the meaning of 29 U.S.C. 152(5) and also within the meaning of 42 U.S.C. §§2000e-2(d) in that they are all engaged in an industry affecting commerce and exist, whole or in part, for the purpose of dealing with the employers concerning grievances, labor disputes, wages, rates of pay, hours, and other terms or conditions of employment of the various companies located in the various cities throughout the state of California. Each local has at least twenty-five (25) members.

*11a. All of the defendants herein are part of a single multi-employer bargaining unit and are covered by a single collective bargaining contract [Exhibit A attached to the original complaint] which creates interdependent and reciprocal obligations among all of the signatory parties. As such all are indispensable to the granting of effective relief and to the prevention of a multiplicity of actions.

FACTUAL ALLEGATIONS

12. In the brewery industry in the San Francisco Bay Area there is only one (1) Black person employed in production and he is not a permanent employee. Before Plaintiff was first hired on May 1, 1968, upon Plaintiff's information and belief, there was only one Black who had ever been hired as a brewer and he left after working one (1) week.

*13. In past years, going back as far as their inception, the defendant employers have discriminated against blacks both in hiring and employment. The defendant unions have likewise discriminated in the referral of Black applicants from the hiring halls they operate and have acted in concert and collusion with defendant employers in discriminating against Blacks in hiring and employment.

*14. The vehicles for the perpetuation of this invidious discrimination are the seniority and referral provisions of the collective bargaining agreement, which were negotiated a number of years ago. [See Exhibit A to the original complaint, Sections Four (4) and Five (5)]. These provisions have been negotiated and maintained in the collective bargaining agreement by the defendant employers and unions acting in concert with each other and through the California Brewers Association and the Joint Board as their agents. All defendant employers and unions have acted to enforce these illegal provisions and, in particular, the Sections 4(a)(1) and 4(5)(a) dealing with permanent status.

*15. Given the circumstances which have existed in the brewery industry in California, these seniority and referral provisions have operated to prevent plaintiff and the members of his class from achieving the rights

and benefits accorded permanent employees or even from having a reasonable opportunity of achieving those rights and benefits.

*16. As a result, permanent status in the brewery industry has almost exclusively been reserved to White workers, and Blacks have been forever precluded from achieving permanent status.

17. Plaintiff Abram Bryant was employed as a temporary brewer for Falstaff off and on for the last five (5) years, beginning May 1, 1968.

18. From June, 1968, until September 4, 1973, Plaintiff was a member in good standing of Local 856 and its predecessor Local 893.

19. Under the present collective bargaining agreement, there are a number of benefits accorded only to those who hold permanent status. Some of these are actually deducted from the earnings of all employees, temporary or permanent. An employee will never receive these benefits unless he is accorded permanent status.

20. When Plaintiff was hired there were no Black workers in the plant at that time. Since that time four (4) or five (5) Black employees have been hired but none were granted permanent status and all have since left Falstaff.

21. Some White employees who have worked forty-five (45) weeks in two (2) calendar years have been granted permanent status whereas Plaintiff in similar circumstances has been refused this status.

*22. Upon Plaintiff's information and belief, the kind of conditions as described above are the same for Black employees who are or were employed by

all the breweries named as Defendants in this complaint. Furthermore, there were very few referrals of Black people to brewery jobs.

22a. After the filing of the original complaint herein, Plaintiff was referred by Defendant Local 856, of which he is presently a member in good standing, to work at the San Francisco facility of the Defendant Theodore Hamm Company, where he is presently employed. Under the terms of the seniority and referral provisions of the collective bargaining agreement herein he should have been referred out by Defendant Local 856 and employed by Defendant Theodore Hamm Company much earlier than he was; instead white workers with inferior seniority and referral rights were referred out and hired in his place. By such actions defendants Local 856 and Theodore Hamm Company discriminated against Plaintiff in violation of the provisions of 42 U.S.C. §§1981 and 2000e *et seq.* In addition, said defendants breached their obligations to him under 29 U.S.C. §§159(a) & 185(a); and resort to the contractual grievance procedure for such breach would be futile for the reasons alleged in Paragraph 27a of the Amended Complaint.

FIRST CLAIM FOR RELIEF

*23. As a direct result of said racial discrimination, perpetuated by the seniority and referral provisions of his collective bargaining agreement, Plaintiff, and each and every member of his class have been deprived of the benefits which are afforded a permanent employee. The aforesaid seniority and referral provisions in the contract, particularly the clauses cited above, have had the result of perpetuating racial discrimination in violation of the provisions of Title VII of the Acts

of Congress, 42 U.S.C. §§2000e *et seq.* and 42 U.S.C. §1981.

SECOND CLAIM FOR RELIEF

*24. Defendant Unions and Joint Board, as parties to the collective bargaining agreement and as part of the single multi-employer bargaining unit created thereby, acting wrongfully, arbitrarily and in bad faith failed fairly to represent Plaintiff and each and every member of his class by negotiating a contract containing unreasonable privileges for some employees over others and by failing to secure or accord to Plaintiff and the members of his class the seniority and referral benefits to which they are entitled under 29 U.S.C. §§159(a) & 185(a) and 28 U.S.C. §§1337, 1338(a) & 2201-02.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

*25a. At the time of filing his charge before the Equal Employment Opportunity Commission (hereafter "EEOC"), Plaintiff was not represented by counsel and was ignorant of the relation of the other parties signatory to the agreement to the discrimination practiced against him. Moreover, he did tell the EEOC agent who interviewed him and actually wrote out the Charge, which is attached hereto as Exhibit "C" and incorporated herein, that he wanted to "sue the whole brewery industry". The agent assured him that by naming the Joint Board he was adequately protecting himself.

*25b. Said written charge to the EEOC was filed by Plaintiff on April 18, 1973, within ninety (90) days of the occurrence [sic] of the acts of which he complained, alleging, under oath, denial by Defendants

Falstaff, Local 893 and Joint Board of Plaintiff's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e *et seq.*; the charge was then submitted to the California Fair Employment Practices Commission.

26. On May 4, 1973, the Fair Employment Practice Commission indicated that it was not assuming jurisdiction and returned the charge to EEOC for investigation.

27. On July 23, 1973, Plaintiff was advised by EEOC that he was entitled to institute a civil action in the appropriate Federal District Court within ninety (90) days of receipt of said letter. A copy of said letter is attached as Exhibit "B".

*27a. Prior to taking any of the actions herein alleged Plaintiff had contacted the executive head of his local union concerning the denial of permanent status, thereby attempting to use the grievance procedure and affording his union the opportunity to act on his behalf. Said union representative rebuffed him saying that there was nothing he could do to change the contract and that was that. Any attempt to further resort to the contract grievance procedure or to any intra-union procedures would have been futile because of the position taken by the executive head of the union and because of Plaintiff's status as one of the few Black members of Local 893, a union controlled by white permanent employees.

27b. On March 25, 1974, Plaintiff filed charges of discrimination with the EEOC in San Francisco, California, against each of the named defendants. These charges are attached hereto and incorporated herein as Exhibit D. On March 27, 1974, and March 29, 1974, the EEOC issued right to sue notices. These

Notices are attached hereto and incorporated herein as Exhibits E, F, G, H and I. In addition, the District Office Counsel for the San Francisco office of the EEOC wrote a letter which is attached hereto and incorporated herein as Exhibit J, explaining that the California Fair Employment Practices Commission now will not investigate class allegations and waived jurisdiction over these charges. The District Office Counsel further states that because of the enormous back log of cases in the EEOC Office, the Commission would not be able to investigate, conciliate, or file suit on the charges within 180 days. Plaintiff alleges, on information and belief, that the facts as contained in her letter are true and correct.

DAMAGES

28. There is between the parties an actual controversy as herein set forth. Plaintiff, and all others similarly situated, have no plain, adequate or complete remedy at law to redress the wrongs alleged, and this suit for a permanent injunction and damages is the only means of securing adequate relief. Plaintiff, and all others similarly situated, are now suffering and will continue to suffer irreparable injury from Defendants' policy, practice and custom of discriminating against qualified Blacks with respect to refusal to hire and allow them to become permanent employees.

29. As a direct result of the aforesaid conduct of Defendants, and each of them, Plaintiff was deprived of the benefit of a permanent position including benefits and promotions that reasonably would have been available to him. The exact amount of loss resulting from said deprivation is unknown and Plaintiff prays to amend his complaint to show such exact amount when it has been ascertained.

30. As a further direct and proximate result of the aforesaid conduct of Defendants, and each of them, each and every member of Plaintiff's class was deprived of gainful employment for a period of months. The exact amount of loss resulting to the members of Plaintiff's class from said deprivation is unknown to Plaintiff.

31. As a further direct and proximate result of the aforesaid conduct of Defendants, and each of them, Plaintiff was injured in his reputation and in his future earning capacity all to his damage in the sum of One Hundred Thousand Dollars (\$100,000).

32. As further direct and proximate result of the aforesaid conduct of Defendants, and each of them, each and every member of Plaintiff's class was injured in his reputation and in his future earning capacity all to his damage in the sum of One Hundred Thousand Dollars (\$100,000).

33. As a further direct and proximate result of the aforesaid conduct of Defendants, and each of them, Plaintiff suffered humiliation and gross emotional upset, pain and suffering, all to his damage in the sum of Fifty Thousand Dollars (\$50,000).

34. As a further direct and proximate result of the aforesaid conduct of Defendants, and each of them, each and every member of Plaintiff's class suffered humiliation and gross emotional upset, pain and suffering, all to his damage in the sum of Fifty Thousand Dollars (\$50,000).

35. Because of the willful, intentional and malicious acts of Defendants, and each of them, as hereinbefore alleged, Plaintiff claims punitive or exemplary damages

in the sum of One Hundred Fifty Thousand Dollars (\$150,000.)

36. Because of the willful, intentional and malicious acts of Defendants, and each of them, as hereinbefore alleged, each and every member of Plaintiff's class claims punitive or exemplary damages in the sum of One Hundred Fifty Thousand Dollars (\$150,000.)

PRAYER

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment for Plaintiff and each and every member of his class as follows:

1. Granting Plaintiff and each and every member of his class a declaratory judgment that Defendants' acts, and the acts of each of them, complained of herein, violated Plaintiff's and each and every member of his class' rights under Title VII of the Civil Rights Act of 1964.

*2. Granting Plaintiff an injunction restraining Defendants, and each of them, their agents, employees, and all those acting in concert with them, from maintaining the practice of requiring an employee to work forty-five (45) consecutive weeks in one calendar year or anything similar to become a permanent employee, and from maintaining other provisions of the seniority and referral provisions of the collective bargaining agreement which perpetuate discrimination against Plaintiff and the members of his class; and further awarding Plaintiff and the members of his class seniority rights and benefits which will recompense them for the injury they have suffered from the conduct herein alleged.

*3. Granting each and every member of Plaintiff's class damages against Defendant Unions and Joint

Board for failure to fairly represent each of them in the amount of \$10,000.

*4. Granting Plaintiff damages against Defendant Unions and Joint Board ~~for~~ failure to fairly represent him in the amount of \$10,000.

5. Granting Plaintiff [sic] his actual damages, his loss of reputation and earning capacity, and his losses through humiliation and upset, according to proof.

6. Granting each and every member of Plaintiff's class his actual damages, his loss of reputation and earning capacity, and his loss through humiliation and upset, according to proof.

7. Granting Plaintiff and each and every member of his class, for punitive and exemplary damages, the sum of One Hundred Fifty Thousand Dollars (\$150,000) from and against Defendants, and each of them, jointly and severally.

8. Granting Plaintiff permanent status as an employee of Falstaff as of June 1, 1968.

9. Awarding Plaintiff his costs herein.

10. Awarding Plaintiff reasonable attorneys' fees.

11. Granting Plaintiff such other and further relief as to the Court seems just and proper.

Dated: May 15, 1974.

ROMINES, WOLPMAN, TOOBY, EICHNER, SORENSEN & CONSTANTINIDES

By /s/ James Wolpman
JAMES WOLPMAN
Attorneys for Plaintiff

[Certificates of Service and Exhibits Omitted]

[R. 446-472]

**Relevant Provisions of the Collective
Bargaining Agreement.***

AGREEMENT

This Agreement made and entered into this 1st day of June, 1970, by and between the TEAMSTER BREWERY & SOFT DRINK WORKERS JOINT BOARD OF CALIFORNIA (herein sometimes referred to as the "Joint Board" or "Union"), the CALIFORNIA BREWERS ASSOCIATION, and ASSOCIATIONS and INDIVIDUAL EMPLOYERS signatory hereto.

GENERAL PROVISIONS

Section 1. The term "Individual Employer" as used herein means each employer who is now a member of the California Brewers Association. Other associations of employers and others employers not members of such other associations or of the association named herein, may become signatory hereto by signing a counterpart hereof provided that in the case of such other associations no member of such other association or employer represented by such association for collective bargaining purposes is then engaged in a labor dispute with the Union or any of its constituent local unions and in the case of such other employers no such employer is then engaged in a labor dispute with the Union or any of its constituent local unions.

This Agreement covers the following counties of the State of California:

*The entire collective bargaining agreement had been originally attached as an exhibit to the Second Amended Complaint, and resubmitted in the Appendix to the Ninth Circuit.

Alameda	Sacramento
Contra Costa	San Bernardino
Fresno	San Diego
Imperial	San Francisco
Inyo	San Joaquin
Kern	San Luis Obispo
Kings	San Mateo
Los Angeles	Santa Barbara
Madera	Santa Clara
Marin	Santa Cruz
Mono	Solano
Monterey	Sonoma
Napa	Tulare
Orange	Ventura
Riverside	

Stanislaus and Yolo, except for those individual establishments therein of Individual Employers covered hereby which may be under contract with another labor organization covering employees performing all or any part of the work covered by this Agreement.

If the Union enters into an Agreement with a distributor or association of distributors covering employees employed in the Brewing Industry in California in the Counties above named and in the classifications covered by this Agreement, such employees' seniority in the Brewing Industry in California in the Counties above named shall be recognized hereunder in accordance with the provisions of Section 4 of this Agreement.

Section 2. (a) The word "EMPLOYEE" as used herein means those employees of the Individual Employers covered hereby who perform their services principally in the State of California and within the counties hereinabove listed and who are: * * *

Section 4. (a) With respect to Brewers, Bottlers, Drivers and Shipping and Receiving Clerks and Checkers for the purposes of seniority only there shall be five classes of employees, as follows:

- Permanent employees
- Temporary employees (other than Bottlers)
- Temporary Bottlers
- Apprentices
- New employees

Subject to the provisions of Sections 4 (1) and 43. The term temporary employee includes a temporary bottler unless the reference expressly negates such an inclusion.

(1) A permanent employee (other than Bottlers) is any employee other than an apprentice who, subject to subsection "(a)(5)" following, has completed forty-five weeks of employment under this Agreement in one classification in one calendar year as an employee of the brewing industry in this State. Temporary Bottlers shall be entitled to the full rate and permanent status after they have worked 1600 hours in a calendar year. Hours worked since January 1, 1970 shall count for this purpose.

Time lost because of sickness or injury, leave of absence, or vacation shall not be counted as "employment under this Agreement" for the purposes of this section.

All employees, except apprentices, who are on the date of this Agreement qualified as permanent employees under the provisions of the brewers' distributors' agreement previously in effect with the Teamster Brewery & Soft Drink Workers Joint Board of California and those employees covered by this Agreement who

have qualified for a vacation based on employment in California as a brewer, bottler, driver or helper, or checker or shipping or receiving clerk under the provisions of a contract with another labor organization in the prior year for an employer covered hereby shall be considered permanent employees.

(2) A temporary employee (other than Bottlers) is any person other than a permanent employee or an apprentice who worked under this agreement or predecessor agreements in the preceding calendar year for at last sixty (60) working days, subject to subsection "(a)(6)", or who was a temporary employee when he entered the armed services and retains such status; provided, however, that an employee who is or was employed without gaining seniority by virtue of Subsection (g) hereof or Section 5(b) is not given the status of a temporary employee by such employment.

A temporary Bottler is any Bottler other than a permanent Bottler as set forth in Section 4(1).

(3) An apprentice is an employee whose employment is governed by the provisions of this Agreement applicable to apprentices. An apprentice upon completion of his apprenticeship period shall take the status of a permanent employee and his seniority as a permanent employee shall commence as of the date of his employment as an apprentice.

(4) A new employee is any employee who does not qualify as a permanent employee, a temporary employee or an apprentice; provided, however, that an employee who is or was employed without gaining seniority by virtue of Subsection (g) hereof or Section 5(b) is not given the status of a new employee by

such employment. On December 31 of each year, all new employees having plant seniority at an establishment and who have worked in the industry under this Agreement for at least sixty (60) working days during the preceding twelve (12) months shall become temporary employees.

(5) A permanent employee who is not employed under this Agreement for any consecutive period of two (2) years shall thereupon lose his status as a permanent employee hereunder, provided, however, that the period of two years will be extended for any period of incapacity. A permanent employee who quits the industry or who is discharged in accordance with the provisions of Section 3 hereof shall thereby lose his status and all seniority hereunder. A permanent employee who has been discharged by any Individual Employer in the exercise of his management function shall thereby lose all seniority with such Individual Employer. Such person may regain his status as a permanent employee by being re-employed subject to this Agreement within two (2) years from such quitting or discharge.

(6) A temporary employee who is not employed subject to this Agreement for a period of one (1) year shall thereupon lose his status as a temporary employee. A temporary employee or new employees or apprentice who quits the industry or who is discharged in accordance with the provisions of Section 3 hereof shall thereby lose his status and all seniority hereunder. A temporary employee who has been discharged by an Individual Employer in the exercise of his management function shall thereby lose all seniority with such individual Employer. Employment

prior to such loss of status under this subsection shall not be counted thereafter in determining the seniority or status of such a person.

(7) A new employee who fails to qualify for transfer to temporary employee status at the end of a year shall lose his status as a new employee.

(b) A permanent employee who has been laid off and not discharged by an Individual Employer in the exercise of management's function may be dispatched—if such employee so desires—for work in any establishment of any Individual Employer in the local area of his last employment and shall have the right to replace—as of Monday—the temporary employee or new employee with the lowest plant seniority therein employed regardless of anything in this Agreement to the contrary. The Individual Employer need not employ such permanent employee unless he is competent to fill the position held by the temporary employee or new employee who is to be replaced.

(c) A seniority list for each of the five classifications of employees shall be maintained for each establishment of each Individual Employer. The last employee on the seniority list of the establishment who is working in the establishment shall be the first laid off, and the first employee on the seniority list of the establishment who is not working in the establishment shall be the first rehired. Each such seniority list shall be based on the following: Sections of the list:

(1) The first portion of the seniority list shall comprise the permanent employees other than Bottlers having seniority in the establishment arranged in descending order of their seniority.

(2) The second portion of the seniority list shall comprise the temporary employees other than Bottlers having seniority in the establishment, arranged in descending order of their seniority.

(3) The lowest portion of the seniority list shall comprise the new employees having seniority in the establishment arranged in descending order of their seniority.

(4) Permanent and Temporary Bottlers entitled to seniority shall be placed on a separate seniority list which shall follow the procedure set forth in subsections (c)(1) and (c)(2) above.

(5) A separate list shall be maintained for apprentices.

Seniority Dates of Individual Employees

(1) The plant seniority of each permanent employee shall date from the first day of his employment as a permanent employee or apprentice in the establishment of the Individual Employer during his current period of unbroken plant seniority. When the seniority of several permanent employees dates from the same day, their relative seniority as permanent employees shall be in accord with their length of service in the industry in California.

(2) The plant seniority of each temporary employee shall date from the first day of his employment as a temporary employee in the establishment of the Individual Employer during his current period of unbroken plant seniority. When the seniority of several temporary employees dates from the same day, their relative seniority as temporary employees shall be in accord with their length of service in the industry in California subject to (4) hereof.

(3) The plant seniority of each new employee shall date from the first day of his employment as a new employee in the establishment of the Individual Employer during his current period of unbroken plant seniority. When the seniority of several new employees dates from the same day, their relative seniority as new employees shall be in order of hire in accordance with 5(a)(3).

(4) On December 31 of each year, the names on the list of new employees having plant seniority at an establishment and who have worked in the industry under this Agreement for at least sixty (60) working days during the preceding twelve (12) months, on that date shall be transferred, in the existing sequence to the end of the list of temporary employees.

(d) An employee having seniority in one establishment while working in another establishment and who leaves the other establishment while work is available to him there in order to maintain his seniority in the first establishment shall lose plant seniority in the other establishment. An employee who elects to remain at work at the other establishment shall lose plant seniority in the first establishment.

(e) In all cases in which a permanent employee accepts a transfer from one establishment of an Individual Employer to another establishment of such Individual Employer in the local area, such employee shall retain for a period of two years from the date of such transfer his plant seniority rights in the establishment from which he was transferred. He may, upon thirty (30) days' notice to the employer, within such two-year period, return to the individual establishment from which he was transferred and the Individual Em-

ployer may transfer such employee back to such establishment at any time within such period. In either case, his plant seniority rights therein shall be the same as if he had not accepted such transfer in the first place.

(f) Apprentices shall be subject to seniority only as between apprentices working for the same brewery establishment. Discharge by any Individual Employer in the exercise of his management function terminates all seniority rights of an apprentice.

(g) Any person employed without seniority shall gain no seniority if a person with seniority reports for such work within forty-eight (48) hours of his employment.

(h) The Individual Employer has the right to increase or reduce the number of employees at any time subject to the provisions of this Agreement.

(i) (1) Regardless of anything to the contrary in this contract contained, an Individual Employer cannot be compelled to re-employ any employee, permanent or temporary or new or applicant or apprentice, who has been previously discharged by such Individual Employer in the exercise of his management function, provided, however, that he may re-employ such employee if he so desires. If such Individual Employer does re-employ such discharged employee, such re-employed employee's plant seniority shall start from the date of such re-employment.

(2) Regardless of anything to the contrary in this Agreement, any permanent, temporary or new employee who is discharged for dishonesty shall lose his status and seniority, if any, as of the date of such discharge, and employment prior to such loss of status and senior-

ity shall not be counted thereafter for any purpose. Pilfering of cases or inducing bottlers or loaders to give drivers extra bottles shall be regarded as dishonesty and dealt with as above set forth. The furnishing of surety bonds against embezzlement shall be left to Individual Employer's discretion; provided, however, that said Individual Employer shall be required to pay the premium on said bond and provided further that said bond shall in no way be construed as affecting said employee's union obligation.

(j) A driver, helper or servicer covered by this contract who accepts a salesman, salesman-displayman, or displayman's job with his employer for whom he is at that time working in a classification covered by this Agreement shall, so long as he stays in the employ of the same employer at the same establishment, retain his seniority under this Agreement in such employer's establishment. If he is laid off or terminated (other than discharged for cause) from the salesman, salesman-displayman or displayman's job by such employer he may exercise such retained seniority rights provided he does so within thirty (30) days of such lay-off or termination. Should he leave the employ of such employer, he shall lose his seniority rights with such employer but shall retain his status in the industry subject to Sections 4(a)(5) and 4(a)(6) of this Agreement.

(k) Regardless of anything in this Agreement to the contrary, in the event that a permanent employee is laid off, he may register on the out-of-work list in any classification covered by this Agreement and shall be eligible to be dispatched upon the exhaustion of the temporary employees out-of-work list. In the

event a salesman, salesman-displayman or displayman with five (5) years seniority in the industry in such classification or classifications who is laid off or terminated (other than discharged for cause) from such salesman, salesman-displayman or displayman's job shall be eligible to be dispatched as a permanent driver hereunder. Such employee shall accrue no seniority if dispatched in a classification other than that in which he is a permanent employee and shall have no right to bump on such dispatch, although he shall maintain and accrue seniority as such permanent employee. The Individual Employer need not employ such permanent employee unless he is competent to perform the work when dispatched in a classification other than that in which he is a permanent employee.

Salesmen, Salesmen-displaymen and Displaymen who have been employed in the industry for sixty (60) days or more shall be considered permanent employees for the purposes of registering only.

(1) (I) A Temporary Bottler is any Bottler other than a permanent Bottler.

(2) After completion of the probationary period specified in Section 31, Temporary Bottlers shall have seniority for dispatch and layoff purposes only among Temporary Bottlers. After completion of such probationary period their seniority shall be retroactive to the first day of employment in that calendar year.

(3) Temporary Bottlers may not be employed in a previously established bumping area so long as a permanent Bottler is available for employment in such previously established bumping area.

(4) A Temporary Bottler shall lose his seniority if not employed under this Agreement for one (1)

year and for other reasons set forth in this Agreement providing for loss of seniority.

(5) (a) Temporary Bottlers shall work only in the classification in which dispatched. They shall receive vacation, holiday, overtime, shift differential fringes only. Pension contributions shall be made for Temporary Bottlers from the first compensable hour. Health and welfare contributions for Temporary Bottlers shall commence after the probationary period has expired. Temporary Bottlers shall be entitled to receive permanent Bottlers' pay after they have worked 3000 hours of employment under this Agreement in one classification in two consecutive calendar years as an employee of the brewing industry in this State. Hours worked since January 1, 1970 shall count for this purpose.

(b) If permanent Bottlers are available, temporary Bottlers shall work no overtime, unless a part of an entire crew.

(c) Temporary Bottlers shall be employed on a day to day basis.

Section 5. (a) The Individual Employer must secure all employees covered by this Agreement through the employment offices of the Local Union affiliated with the Teamster Brewery & Soft Drink Workers Joint Board of California, with jurisdiction.

With respect to Brewers, Bottlers, (Drivers) and Shipping and Receiving Clerks and Checkers for the duration of this agreement, satisfactory and competent men will be furnished within forty-eight (48) hours and in the event they cannot be or are not furnished, the Individual Employer may employ any person.

(b)(1) If the Individual Employer requests employees (except Bottlers) for work for less than thirty-

seven and one-half (37½) straight-time hours the Local Union shall dispatch those employees readily available for dispatch and the Individual Employer may hire for such work any unemployed permanent, temporary employee, new employee or applicant for employment, without regard to seniority and such employee shall establish no seniority rights by reason of such employment for such work.

(2) If the Individual Employer requests Bottlers for work for less than thirty (30) straight time hours in a calendar week, the Local Union shall dispatch Temporary Bottlers who are registered for employment in the order of their experience in the industry and when the list of such persons is exhausted, in the order of their registration.

(c) In all other cases the Local Union shall dispatch and the Individual Employer shall hire as follows:

(1) In dispatching the Local Union shall first dispatch in accordance with the seniority provisions set out in Section "4" hereof in descending order of seniority, the employee with the highest seniority to be dispatched first.

(2) In the case of Brewers, Drivers, Shipping and Receiving Clerks and Checkers the Local Union shall next dispatch permanent employees registered in the established area who may be unemployed and thereafter temporary employees registered in the established area who may be unemployed and thereafter new employees who may be unemployed, subject to Section 43. In the case of Bottlers the Local Union shall next dispatch permanent Bottlers registered in the previously established bumping area who may be unemployed, and

thereafter permanent employees registered in the previously established bumping area in other classifications, who may be unemployed, and thereafter the Individual Employer may employ Temporary Bottlers. The Individual Employer shall have full right of selection among said employees.

(3) The Local Union shall next dispatch applicants who may be registered for employment under Section "5(d)" hereof, provided, however, that in dispatching such applicants those with the most experience in the work in the State of California shall be dispatched first and those with the least experience in such work in the State of California shall be dispatched last, and thereafter those with the most experience in the work regardless of where acquired shall be dispatched first and those with the least experience in the work last, and thereafter those with no experience in the work shall be dispatched in accordance with the date the application was filed, those with the earliest date being dispatched first. The Individual Employer shall have full right of selection among said employees dispatched.

(4) The order of dispatch of permanent employees and of temporary employees and of new employees within classifications as provided in paragraph (c)(2) hereof shall be on the basis of the length of service in the industry in California.

(5) In the event an employee is dispatched pursuant to subsection "(c)(1)" hereof and he does not report for work within forty-eight (48) hours, he shall lose his seniority rights in the individual establishment to which he was dispatched, unless such failure is excused under Section "7(a), (b) or (d)" hereof.

(6) The seniority privileges protected by subsection "(c) (1) and (2)" hereof may be exercised only if such vacancy is to be filled for thirty-seven and one-half (37½) straight-time hours (30 hours in the case of Bottlers) or more and if the person with seniority reports for such work within forty-eight (48) hours of the existence of the vacancy.

(d) The Local Union shall maintain appropriate registration facilities for applicants for employment to make themselves available for job opportunities. The Local Unions and each of them will conduct such registration facilities without discrimination either in favor of or against such applicants by reason of membership in or non-membership in any union or by reason of activity on behalf of or in opposition to any union. Such dispatches will not be based or in any way affected by union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies or requirements. Each Local Union with jurisdiction shall accept applications for employment in the various classifications as follows:

Brewers	February through March
Bottlers, Shipping and Receiving	
Clerks and Checkers	April through June
Drivers, Helpers and	
Servicers	May through June

Each application shall expire on the day preceding the first day for the receipt of such application in the following year.

(e) The Local Unions and each of them in carrying out the provisions of this Agreement with respect to seniority and hiring and the registration and dispatch

of prospective employees will not discriminate either in favor of or against such prospective employees by reason of membership in or non-membership in any union or by reason of activity on behalf of or in opposition to any union, nor shall the carrying out of the provisions of this Agreement with respect to seniority and hiring and the registration and dispatch of prospective employees be based or in any way affected by union membership, by-laws, rules, regulations, constitutional provisions or any other aspect or obligation of union membership, policies or requirements, except to the extent of enforcing Section 3 hereof.

(f) Each Local Union and each Individual Employer will post at all employment offices and at all places in any establishment where notices to employees or applicants for employment are customarily posted a copy of this Agreement.

(g) It is agreed that the matter of referring persons for employment under this agreement and operating the employment offices for such referrals is not necessarily a management or union function, but by contract may be made a union responsibility. By this contract it is made a responsibility of the union and the Local Unions in carrying out the seniority and employment rights provided in this Agreement.

The respective Local Unions and the Teamster Brewery & Soft Drink Workers Joint Board of California, agree that they will in every respect exercise the responsibility of referring workers to employment and operating employment offices therefor in accordance with law. It is distinctly understood and agreed that neither the employer nor any Individual Employer is to have or may have any right, power, voice or control

over such employment offices or the operation thereof, and that neither the Teamster Brewery & Soft Drink Workers Joint Board of California, nor any Local Union acts as the agent or representative of the employer in the operation of such employment offices. By reason of the fact that the union and the Local Unions have obtained such control thereof through regular processes of collective bargaining, it is agreed that the Union and the Local Union shall be solely responsible for their operation to all persons, agencies and tribunals, subject to the employer's right to suggest, initiate or use procedures outside this Agreement in which any alleged abuse of this function may be reviewed by others having jurisdiction.

(h) This subsection shall apply only to an Individual Employer when he has five (5) or more persons performing work covered by this Agreement. The Individual Employer will notify the employment office of the Local Union with jurisdiction by 12:00 Noon Thursday of each week of the names of brewers, bottlers, checkers or shipping and receiving clerks to be laid off at the end of the work week, and the number of such employees to be hired at the start of the work week next following. The Local Union will notify the Individual Employer the following day not later than 12:00 Noon of the number of such employees to be dispatched for employment on the following Monday to displace new Employees and/or temporary employees, and the names of such employees the Local Union was able to contact and dispatch up to that time. The above Provisions will not apply when the failure to give notice by the time specified was due to equipment breakdown, acts of God, or other reasons beyond the control of the party.

Section 6. (a) No employee shall be discriminated against for activity in or on behalf of the Union, but * * *

	FIRST SHIFT		SECOND SHIFT		THIRD SHIFT	
	Weekly	Hourly	Weekly	Hourly	Weekly	Hourly
Brewers, Apprentices						
1st Year.....	\$188.25	\$5.02	\$192.00	\$5.12	\$193.87	\$5.17
2nd Year.....	190.12	5.07	193.87	5.17	195.75	5.22

Note: Weekly rates determined by multiplying hourly rate times 37½. Shift differentials of 12½¢ for the second shift and 20¢ for the third shift, effective June 1, 1971, may be established. If so, the cost will be deducted from the wage increases otherwise effective on June 1, 1971.

WAGE RATE SCHEDULE
Effective June 1, 1972

	FIRST SHIFT		SECOND SHIFT		THIRD SHIFT	
	Weekly	Hourly	Weekly	Hourly	Weekly	Hourly
Brewers, Permanent....	\$220.12	\$5.87	\$223.87	\$5.97	\$225.75	\$6.02
Bottlers, Permanent....	215.62	5.75	219.37	5.85	221.25	5.90
Checkers, Permanent..	215.62	5.75	219.37	5.85	221.25	5.90
(Shipping & Receiving Clerks)						

The above rates include 5¢ per hour allocated from the S.U.B. Fund and that amount is subject to reallocation to that Fund. See Section 64.

Brewers, Temporary...	\$218.25	\$5.82	\$222.00	\$5.92	\$223.87	\$5.97
Brewers, Extras.....	199.50	5.32	203.25	5.42	205.12	5.47
Bottlers, Temporary....	184.12	4.91	187.87	5.01	189.75	5.06
Checkers, Temporary..	213.75	5.70	217.50	5.80	219.37	5.85
Brewers, Apprentices						
1st Year.....	203.25	5.42	207.00	5.52	208.87	5.57
2nd Year.....	205.12	5.47	208.87	5.57	210.75	5.62

Note: Weekly rates determined by multiplying hourly rate times 37½. Shift differentials of 12½¢ for the second shift and 20¢ for the third shift, effective June 1, 1971 may have been established. If so, the cost will be deducted from the wage increases otherwise effective on June 1, 1971.

**Minute Order of District Court of Northern
District of California.**

JUDGE LLOYD H. BURKE

CIVIL NO.: C-73-1866 LHB.

DATE: Sept. 11, 1974.

TITLE: Adam [sic] Bryant VS California Brewers et al.

ATTYS: James Wolpman, Willard Carr, Charles Miller, Wm. Alderman, David Rosenfeld, George Christensen.

REPORTER: Betty Turrentine.

DEPUTY CLERK: John W. Nelson.

Proceeding:

Motions:

1. Motions to dismiss.

ORDERED: Complaint is dismissed as to all debts. Mr. Carr to prepare order.

[R. 518]

Order Granting Defendants' Motions to Dismiss Pursuant to Federal Rules of Civil Procedure.

In the United States District Court, Northern District of California.

Abram Bryant, individually and on behalf of all others similarly situated, Plaintiff, v. California Brewers Association, et al., Defendants. Civil Action No. C 73-1866-LHB.

Defendants' motions to dismiss pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, came on for hearing before the undersigned District Judge on September 11, 1974. Appearances for the plaintiff were made by James Wolpman, Romines, Wolpman, Tooby, Eichner, Sorenson, Constantinides and Cohen, and Sherry Gendleman, Equal Employment Opportunity

Commission. Appearing for various defendants were Julius Reich, Brundage, Neyhart, Miller, Pappy and Reich; William F. Alderman, Orrick, Herrington, Rowley and Sutcliffe; David A. Rosenfeld, Levy, Van Bourg and Hackler; Willard Z. Carr, Jr., Gibson, Dunn and Crutcher; George Christensen, Overton, Lyman and Prince; and Charles G. Miller, McKenna, Fitting and Finch.

The Court having read and considered all pleadings and documents on file herein, the memoranda of points and authorities in support of and in opposition to the motions filed by the parties, the Court having heard and considered the arguments of counsel, both in support of and in opposition to the motions filed by the parties, and good cause appearing, the action is dismissed pursuant to the Federal Rules of Civil Procedure as to all defendants because the amended and supplemental Complaint fails to state a claim upon which relief can be granted.

Upon the foregoing,

IT IS ORDERED that the defendants' motion to dismiss is granted as to each defendant;

IT IS FURTHER ORDERED that judgment be entered decreeing that plaintiff take nothing by his amended and supplemental Complaint and that this Complaint and action be and the same are hereby dismissed with prejudice;

IT IS FURTHER ORDERED that the Clerk of the Court send, by United States mail, copies of this Order to all counsel herein.

DATED: Oct. 17, 1974.

/s/ Lloyd H. Burke
Judge of the District Court
[R. 519-20]

Judgment.

In the United States District Court, Northern District of California.

Abram Bryant, individually and on behalf of all others similarly situated, Plaintiff, v. California Brewers Association, et al., Defendants. Civil Action No. C 73-1866-LHB.

This cause having been heard in the above-entitled Court before the undersigned District Judge, and the issues having been duly considered and decided, and an order granting defendants' motions to dismiss the amended and supplemental Complaint, and for judgment having been entered,

IT IS ORDERED, ADJUDGED AND DECREED that plaintiff take nothing by his amended and supplemental Complaint and that it and this action be and hereby are dismissed with prejudice.

DATED: Oct. 17, 1974.

/s/ Lloyd H. Burke
Judge of the District Court
[R. 521-22]